

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RRW LEGACY MANAGEMENT GROUP,
INC., et al.,

Plaintiffs,

v.

CAMPBELL WALKER,

Defendant.

CAMPBELL INVESTMENT COMPANY,

Plaintiff,

v.

CAMPBELL WALKER,

Defendant.

CASE NO. C14-326 MJP

ORDER ON MOTIONS FOR
SUMMARY JUDGMENT

(CONSOLIDATED WITH C14-1544
MJP)

1 The Court, having received and reviewed:

- 2 1. Plaintiffs' Motion for Summary Judgment (Dkt. No. 92), Campbell M. Walker's
3 Opposition to Motion for Summary Judgment (Dkt. No. 103), and Plaintiffs' Reply to
4 Motion for Summary Judgment (Dkt. No. 111);
- 5 2. Plaintiff Campbell Investment Company, Inc.'s Motion for Partial Summary
6 Judgment (Dkt. No. 96); Defendant Campbell M. Walker's Opposition to Campbell
7 Investment Company, Inc.'s Motion for Summary Judgment (Corrected)(Dkt. No.
8 108); and Plaintiff Campbell Investment Company, Inc.'s Reply in Support of Motion
9 for Partial Summary Judgment and Motion to Strike (Dkt. No. 114);
- 10 3. Defendant Campbell M. Walker's Motion for Summary Judgment (Dkt. No. 98);
11 Plaintiffs RRW and Antoinette Walker's Opposition to Defendant's Motion for
12 Summary Judgment (Dkt. No. 100); and Defendant's Reply in Support of Motion for
13 Summary Judgment (Dkt. No. 109);¹

14 and all attached declarations and exhibits, makes the following rulings:

15 IT IS ORDERED that summary judgment on Plaintiff RRW Legacy Management Group,
16 Inc.'s request for declaratory judgment is GRANTED.

17 IT IS FURTHER ORDERED that summary judgment on Plaintiff RRW Legacy
18 Management Group, Inc.'s motion to dismiss Defendant's counterclaims is GRANTED.

19 IT IS FURTHER ORDERED that summary judgment on Plaintiff Campbell Investment
20 Company's claim for breach of fiduciary duty is GRANTED.

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23 ¹ Prior to the scheduled oral argument on these motions, the Court was informed that the individual claims of
24 Plaintiff Antoinette Walker had been resolved, thus mooted portions of Plaintiffs' Motion for Summary Judgment
(Dkt. No. 92) and Defendant's Motion for Summary Judgment (Dkt. No. 98). This order will address only the
issues remaining following resolution of Plaintiff Walker's individual claims.

1 IT IS FURTHER ORDERED that Plaintiff Campbell Investment Company's motion to
2 strike is GRANTED.

3 IT IS FURTHER ORDERED that summary judgment on Defendant Campbell M.
4 Walker's claim of defense under laches is DENIED.

5 **Background**

6 **A. Argyll Limited Partnership and CIC**

7 The patriarch of the Walker family, Robert R. Walker ("Robert"), formed Argyll Limited
8 Partnership ("Argyll") in 1992; Argyll is governed by a limited partnership agreement ("the
9 Agreement") subject to Washington law. (Dkt. No. 11-1 at 5, 22; Dkt. No. 11 at 2.) Under the
10 Agreement, Robert became the General Partner, and he and his five children – Defendant
11 Campbell Walker ("Campbell"), Victoria Walker Councell ("Victoria"), Cody C. Walker
12 ("Cody"), Plaintiff Antoinette R. Walker ("Antoinette"), and Robert Angus Walker ("Angus") –
13 became limited partners. (Dkt. No. 11-1 at 5; Dkt. No. 11 at 2.) Under the Agreement, Robert
14 had a 5% interest as General Partner and a 20% interest as a limited partner. (Dkt. No. 11-1 at
15 7.) The children each had 15% interests as limited partners. (Id.)

16 The General Partner had "exclusive power and authority to manage" Argyll's business
17 and affairs. (Id. at 13.) Limited partners cannot vote on any matter except for "removal and
18 selection of a successor" to the General Partner (and to require substance testing). (Dkt. No. 11-
19 1 at 14.) As stated in the Agreement, the limited partners can remove the General Partner "for
20 cause," which includes acts of fraud, larceny, willful misconduct, deceit or a "crime otherwise
21 involving moral turpitude, willful misrepresentation to Partners, or the continued and habitual
22 misuse of alcohol or any use of controlled substances." (Id. at 15.) An "affirmative vote of
23 Limited Partners having a majority of the Limited Partners' Partnership Interests" is necessary to
24 remove the General Partner for cause. (Id. at 14.)

Once the General Partner is removed, the mechanism by which the successor General Partner is selected is in dispute (this dispute comprises the second part of Plaintiff RRW Legacy Management Group's (RRW's) declaratory judgment request). There are two sections in the Agreement which concern the selection of a new General Partner. § 6.1 states

6.1 Voting. A Limited Partner shall not be entitled to a vote on any matter whatsoever except only for (a) removal and selection of a successor to, and requesting testing of, the General Partner or Successor General Partner as provided in Section 7 of this Agreement, (b) removal or appointment of an Agent as provided in Section 9.3, and (c) appointment of a Liquidator as provided in Section 11(b) of this Agreement. In these instances, each Limited Partner's voting interest shall be equal to his or her Partnership Interest and the affirmative vote of Limited Partners having a majority of the Limited Partners' Partnership Interests shall constitute approval of the action being considered.

But there is another section which is also concerned with the replacement of a General Partner. § 7.6 states

7.6 Termination. If both the General Partner and any and all Successor General Partners are removed, withdraw, resign or otherwise become unable or unwilling to act or continue to act as General Partner of the Partnership, the Partnership shall be terminated unless a new General Partner is selected within sixty (60) days of the date on which the Partnership no longer had a General Partner. The Limited Partners first shall be given a period of thirty (30) days in which to select a new General Partner. Selection shall occur upon agreement of Limited Partners holding 60% or more of the Limited Partners' Partnership Interests.

There is considerable disagreement as to which of these provisions applied to the selection of Defendant's replacement as General Partner (see "RRW Declaratory Judgment" section *infra*). Once selected, the new General Partner "shall, unless already acquired by him or her, purchase the Partnership Interest of the General Partner[.]" (*Id.* at 16.)

Argyll was created to manage Robert's share in Campbell Investment Company, Inc. (CIC) (RRW Ex. A, ¶ 3.1), a closely-held family corporation which functioned as an investment vehicle for the Walker family. Defendant was the president and a director of CIC from 1999-2014. Argyll is the largest shareholder in CIC (Dkt. No. 11, ¶ 5) and thus the Argyll General

1 Partner controls the management of CIC. The remaining siblings were minority shareholders of
2 CIC during the period in question.

3 **B. Events After Campbell Succeeded Robert R. Walker as General Partner**

4 In 1999, Robert appointed Campbell to succeed him as General Partner and assigned him
5 his 5% interest as General Partner. (Dkt. No. 11 at 2.) Robert's 20% interest as limited partner
6 was distributed equally among Campbell and the other four children. (Id.) Each of Robert's
7 children then had a 19% interest as a limited partner, and Campbell had an additional 5% interest
8 as General Partner, bringing his total to 24%. (Id.)

9 During his tenure as General Partner of Argyll and President of CIC, Defendant was paid
10 a salary and bonuses by both companies, plus pension contributions and director's fees from
11 CIC. (RRW Ex. M at Attachment 2, p. 11.) Defendant also authorized the payment of several
12 million dollars in management fees to an entity owned and operated by Robert known as the
13 Darshan League, Ltd. ("Darshan"), an off-shore company which was later (following Robert's
14 death) owned by Defendant. (RRW Ex. D at 154:7-25, 169:14-170:9.) The fees were
15 determined based on consultations with two friends and business associates and the agreement of
16 Robert, and no one had the authority to veto or override that determination. (Id., 52:17-53:5,
17 172:16-173:21.) Defendant also took over \$1 million in loans from Darshan, loans which have
18 not been repaid to this date. (Id., 171:9-18, 206:16-18.)

19 In February 26, 2014, Antoinette, Victoria, and Angus voted to remove Campbell as
20 General Partner. (Dkt. No. 11-2 at 2.) Following Campbell's removal, the same three siblings
21 who removed him voted to appoint RRW as the successor General Partner. (Dkt. No. 11 at 3;
22 Dkt. No. 11-3 at 2.) Antoinette is the president and sole shareholder of RRW. (Dkt. No. 15 at
23 7.) Although RRW was appointed as successor General Partner, there has as yet been no transfer
24 of the 5% General Partner interest from Campbell to RRW.

RRW and Antoinette filed the first suit against Campbell (in February 2014), seeking a declaratory judgment that (1) Defendant had been properly removed as General Partner and (2) RRW had been properly installed as his successor (C14-326, Dkt. No. 2); that complaint was amended in a later pleading to add Antoinette's personal causes of action against Defendant. (Dkt. No. 72.)² Defendant filed a third-party complaint asserting counterclaims for tortious interference, civil conspiracy and violation of Washington limited partnership law. (*Id.*, Dkt. No. 12.) Later (in October 2014), CIC filed suit against Campbell, seeking damages for breach of fiduciary duty. (C14-1544, Dkt. No. 1.) The Court consolidated both cases earlier this year. (*Id.*, Dkt. No. 85.)

Discussion

I. RRW's Motion for Summary Judgment³

A. RRW Declaratory Judgment

Plaintiffs seek declaratory judgment on two issues:

1. That Defendant was properly removed for cause.

7.1 Removal of General Partner. Subject to the provisions set forth in this Section 7.1, the Limited Partners shall have the right to remove the General Partner for cause. As used in this Section 7.1, the term "cause" shall mean acts of the General Partner or any individual controlling the General Partner which constitute larceny, fraud, deceit, willful misconduct or a crime otherwise involving moral turpitude, willful misrepresentation to Partners, or the continued and habitual misuse of alcohol or any use of controlled substances.

Plaintiffs claim that Defendant committed "multiple acts of deceit, willful misrepresentation and willful misconduct" (Dkt. No. 92 at 16) – that he misrepresented to them their rights as limited

² As discussed *supra*, Antoinette's personal causes of action have been resolved and are no longer a part of this lawsuit.

³ Defendant asserts that all the claims in all of the Plaintiffs' summary judgment motions are barred by laches, an argument which is fully discussed in the section on CIC's summary judgment motion *infra*.

1 partners, refused to provide financial information about the company, and engaged in a pattern of
 2 self-dealing to his benefit and the company's detriment – and that those acts form the “cause” for
 3 his removal.

4 Many of the allegations against Defendant fall into the realm of “disputed issues of
 5 material fact” (essentially, “he said/she said” charges and countercharges concerning threats,
 6 misrepresentations, etc.). But three of them stand out as undisputed material facts that constitute
 7 adequate grounds for removal and entitle Plaintiffs to summary on this portion of their
 8 declaratory relief:

9 a. Refusal to provide financial information: The Washington Limited Partnership Act (WLPA)
 10 provides the right of limited partners to “inspect and copy required information” concerning
 11 the partnership without “any particular purpose” for seeking the information. RCW
 12 25.10.331(1). All the limited partners allege that they sought information regarding the
 13 company from Defendant at one time or other; in many instances, Defendant denies that they
 14 did so or says they were not “formal, proper” requests for information. (Neither the
 15 Agreement nor Washington statute requires that requests for financial information be in any
 16 particular form or format.) However, Defendant does concede that, on at least two occasions,
 17 he received requests for financial information regarding the company and (on instructions
 18 from Robert) declined to turn any information over. (RRW Ex. D (Campbell Depo) at
 19 126:24—127:19 [request from Antoinette]; 129:20—130:10 [requests from Victoria and
 20 Cody].) Defendant's undisputed refusal to provide such information on request is a clear
 21 violation of the WLPA and an act of willful misconduct.

22 b. Failure to keep company records in Washington: It is undisputed that, at some point
 23 following his appointment as General Partner of Argyll, Defendant began maintaining the
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1 records of Argyll and CIC in Roswell, New Mexico. (RRW Ex. D, 41:11-42:10, 51:16,
 2 125:5-9.) The Agreement required that the records be maintained at the office of the
 3 Partnership (which was at the time of execution located at 300 Harbor Building in Edmonds,
 4 Washington) “or such other place or places in the State of Washington as the General Partner
 5 from time to time designates by notice to the Limited Partners.” (RRW Ex. A, ¶¶ 1.4, 10.1.)
 6 Defendant admitted at his deposition that he was aware of the requirement to maintain the
 7 records within the State of Washington. (RRW Ex. D, 22:8-16, 124:13-125:4.) Defendant’s
 8 removal of the company records to an attorney/friend’s office in New Mexico is a clear
 9 violation of the Agreement and an act of willful misconduct.

10 Defendant argues that the 300 Harbor Building was the office of Robert’s attorney who
 11 left the company in 2000 and it would have been pointless to keep the records there once the
 12 attorney had departed, but the Agreement is clear that the records are to remain in “such
 13 other place or places in the State of Washington as the General Partner from time to time
 14 designates by notice to the Limited Partners.” (emphasis supplied.)

15 Defendant characterizes this issue as “silly.” (Dkt. No. 103 at 17.) The Court could not
 16 agree less. The requirement that the records of a partnership be maintained in a location
 17 where the limited partners have easy access for review is a cornerstone of limited partnership
 18 law in Washington. In this case, it goes to the heart of the contention that Defendant had an
 19 ongoing practice of denying his siblings/limited partners access to the financial records of the
 20 partnership. The removal of the records from the State of Washington was an act of willful
 21 misconduct on Defendant’s part and grounds from removal under the Agreement.

22 c. Financial dealings between CIC and the Darshan League: These allegations (and Defendant’s
 23 response thereto) are discussed in depth in the section concerning Plaintiff CIC’s summary
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1 judgment motion, so the Court will simply note here its conclusion that the financial
2 arrangements created by Defendant (without input or approval from anyone else associated
3 with Argyll or CIC) involving the Darshan League constituted breaches of his fiduciary duty
4 – an act of willful misconduct which (alone) satisfied the “cause” requirement for his
5 removal.

6 The Court notes that Defendant interposed at oral argument the defense that his actions do
7 not qualify as “willful conduct,” citing the legal definition of that term which appears in
8 Adkisson v. Seattle, 42 Wn.2d 676 (1953):

9 To constitute willful misconduct, there must be actual knowledge, or that which the law
10 deems to be the equivalent of actual knowledge, of the peril to be apprehended, coupled
with a conscious failure to avert injury.

11 Id. at 684 (quoting 38 Am.Jur. 693, Negligence, § 48). It is apparently Defendant’s contention
12 that his subjective good faith belief that he was acting in the best interests of the partnership and
13 of his family (with a corresponding absence of intent to actively do harm) shields his behavior
14 from qualifying as “willful misconduct.”

15 The Court is guided by the definition of “willful misconduct” as it appears in the
16 Washington Pattern Civil Jury Instructions:

17 Willful misconduct is the intentional doing of an act which one has a duty to refrain from
18 doing or the intentional failure to do an act which one has the duty to do when he or she
has actual knowledge of the peril that will be created and intentionally fails to avert
injury.

19 WPI 14.01, 6 Wash. Prac., Wash. Pattern Jury Instr. Civ. (6th ed.). The Court finds, under this
20 definition, that Defendant’s actions qualify as “willful misconduct” sufficient to satisfy
21 Washington law and the requirements of the Agreement. There is no question that Defendant
22 behaved intentionally in refusing to provide financial information upon request, moving the
23 partnership records out of the State of Washington and choosing to pay millions of dollars to
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1 Darshan. As this order reflects, there is also no question in the Court’s mind that Defendant both
 2 did things it was his duty to refrain from doing and failed to do things which duty dictated that he
 3 do. The “actual knowledge of the peril” and failure to avert injury elements are satisfied by
 4 Defendant’s knowledge that he owed fiduciary duties to both Argyll and CIC (RRW Ex. D. at
 5 103:10-13, 105:21-106:8) and that the law required that Argyll’s books and records be
 6 maintained in the State of Washington. (Id. at 22:8-16, 124:13-125:4.) In the case of the latter,
 7 Defendant even wrote a margin note on an email outlining his legal duties which queried “What
 8 is the downside or fine or penalty if the conditions are not met?” (RRW Ex. L.)

9 Let the record be clear: by his intentional acts, Defendant violated several statutes
 10 governing the conduct of limited partnerships and corporate governance. It cannot be – and it is
 11 not – a defense in such circumstances that the malfeasant had some subjective belief that his/her
 12 conduct was ultimately in the best interests of the business entity.

13 The Court finds that Defendant was aware of his duties and obligations under the law and
 14 under the Agreement and that his failure, through his intentional acts, to abide by those duties
 15 and obligations qualifies as “willful misconduct.” The Court further finds that cause existed for
 16 Defendant’s removal under the Agreement, that Defendant was properly removed under the
 17 terms of the Agreement, and that Plaintiffs are entitled to summary judgment on the first portion
 18 of their declaratory judgment claim.

19 *2. That RRW was properly appointed as Successor General Partner*

20 The Court finds that the Agreement is not well-drafted as concerns the issue of
 21 appointing a successor General Partner once the existing one is removed. § 6.1 states that the
 22 Limited Partners have voting rights only in limited circumstances, one of which is the “removal
 23
 24

1 and selection of a successor to... the General Partner or Successor General Partner *as provided*
 2 *in Section 7 of this Agreement.*” (emphasis supplied.) It then goes on to say that

3 [i]n these instances [where the Limited Partners have voting rights] each Limited
 4 Partner’s voting interest shall be equal to his or her Partnership Interest and *the*
affirmative vote of Limited Partners having a majority of the Limited Partners’
 Partnership Interest shall constitute approval of the action being considered.

5 (emphasis supplied.) Under § 6.1, General Partners can be removed and appointed by majority
 6 vote of the Limited Partners.

7 However, a review of § 7 reveals the following provision:

8 **7.6 Termination.** If both the General Partner and any and all Successor General
 9 Partners are removed, withdraw, resign or otherwise become unable or unwilling
 10 to act or continue to act as General Partner of the Partnership, the Partnership
 shall be terminated unless a new General Partner is selected within sixty
 (60) days of the date on which the Partnership no longer had a General Partner.
 11 The Limited Partners first shall be given a period of thirty (30) days in which to
 select a new General Partner. *Selection shall occur upon agreement of Limited*
 12 *Partners holding 60% or more of the Limited Partners' Partnership Interests.*

13 (emphasis supplied.) Depending on whether Defendant’s 5% General Partner interest is included
 14 in the calculation, the three siblings/Limited Partners who selected RRW as the Successor
 15 General Partner either did or did not have the 60% “of the Limited Partners’ Partnership
 16 Interests.”

17 The ousting siblings further complicated matters by initially claiming authority under
 18 § 7.6 in the document they transmitted to Defendant announcing the appointment of RRW as the
 19 Successor General Partner (RRW Ex. Q). Plaintiffs have now reconsidered their position and
 20 argue that § 6.1 is the controlling provision and that the three siblings/Limited Partners who
 21 voted out Defendant and voted in RRW had more than a majority of the Limited Partnership
 22 interests and therefore were fully authorized to do what they did.

1 The Court is convinced that § 6.1 is the provision which controls this process. § 7.6 is
 2 intended as a “wrap-up provision” to govern the situation where the affairs of the partnership are
 3 on the verge of termination; that provision (and its “60%” requirement) is clearly conditioned on
 4 the following condition precedent:

5 *If both the General Partner and any and all Successor General Partners are*
 6 *removed, withdraw, resign or otherwise become unable or unwilling to act or*
continue to act as General Partner of the Partnership...

7 (emphasis supplied.) Under the facts before this Court, those conditions simply did not exist --
 8 Defendant had been properly removed, a Successor General Partner had been appointed and was
 9 able and willing to act -- thus the 60% requirement of § 7.6 was inapplicable. The voting
 10 procedure outlined in § 6.1 was in effect and a majority vote was sufficient to install a successor.

11 Plaintiffs are entitled to summary judgment on the second portion of their declaratory
 12 judgment claim as well.

13 3. Defendant’s counterclaims

14 Defendant asserted a number of counterclaims against Plaintiffs in this portion of the lawsuit.
 15 Plaintiffs moved for summary judgment on all of them, and Defendant responded only cursorily
 16 to those arguments. The Court finds Plaintiffs’ position regarding the counterclaims to be well-
 17 taken as analyzed below:

- 18 a. **Civil conspiracy:** This cause of action requires two or more people combining to
 19 accomplish an unlawful purpose and an agreement to accomplish that unlawful
 20 object. Wilson v. State, 84 Wn.App. 332 (1996). Having found that the siblings had
 21 a right to remove Defendant and did so properly, there is no “unlawful purpose” and
 22 this counterclaim fails.

1 **b. Tortious interference:** Defendant asserts that Plaintiffs' actions interfered with
 2 "contractual relationships and business expectancies" he enjoyed as the General
 3 Partner of Argyll. Washington law is clear that a party "who in good faith asserts a
 4 legally protected interest of his own which he believes may be impaired by the
 5 performance of a proposed transaction is not guilty of tortious interference." Brown
 6 v. Safeway Stores, Inc., 94 Wn.2d 359, 375 (1980). Again, summary judgment in
 7 Plaintiffs' favor on the declaratory judgment request operates to foreclose Defendant
 8 from this claim.

9 **c. Breach of duty of good faith and fair dealing:** Defendant cites his removal
 10 "without cause," the failure to advise him of the cause for his removal or provide such
 11 information upon request as violations of the duty of good faith and fair dealing. The
 12 Court has already found that Defendant was removed for cause, and that portion of
 13 his claim can be excised. Defendant cites to no requirement in the Agreement that the
 14 General Partner be provided with notice of the nature of the cause for his removal,
 15 therefore that portion of this claim fails as well.

16 **d. Violation of Washington partnership statutes:** Defendant alleges that his formal
 17 demand for information regarding the nature of the cause for his removal constituted
 18 a lawful demand for access to partnership information pursuant to RCW 25.10.331(2)
 19 and RCW 25.10.431(3) to which Plaintiffs failed to respond. (Dkt. No. 74, ¶¶ 25-29.)
 20 First of all, Plaintiffs maintain that they did offer to make the limited partnership's
 21 records available for Defendant's inspection (*see* RRW Mtn, Ex. S), but that
 22 Defendant never showed up for the inspection. (Declaration of Antoinette Walker, ¶
 23 4.) More to the point, the statute to which Defendant refers provides that limited
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partners may “inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable.” RCW 25.10.331(2). Plaintiffs argue (and Defendant does not contest) that the information he requested does not fall within the ambit of the statute (nor, again, does the Agreement require that the General Partner be provided with notice of the grounds for removal). The Court agrees.

The Court grants summary judgment to Plaintiffs as regards Defendant’s counterclaims; those claims will be dismissed.

II. CIC Motion for Summary Judgment

This Plaintiff has a single cause of action -- breach of fiduciary duty – on which it seeks summary judgment . Defendant interposes a laches defense (discussed at the end of this section).

Under RCW 23B.08.320, a breach of fiduciary duty occurs whenever a director engages in:

1. Intentional misconduct,
2. A knowing violation of the law,
3. A violation of RCW 23B.08.310, or
4. Any transaction with benefits to which the director is not entitled

The common law duties of loyalty, care and acting in good faith (Grassmuck v. Barnett, 281 F.Supp.2d 1227, 1232 (W.D. Wash. 2003)) are heightened in a closely-held corporation such as CIC. Saviano v. Westport Amusements, Inc., 144 Wn.App. 72, 80 (2008). The duties of care owed by directors and officers include requirements to:

- 1 1. Conduct themselves with the care of an ordinarily prudent person in a like position under similar circumstances;
- 2 2. Assess available information and perform their actions carefully, thoughtfully and in an informed manner;
- 3 3. Seek all relevant material information before acting; and
- 4 4. Avoid and prevent corporate waste and unnecessary expense.

5 Grassmueck, 281 F.Supp.2d at 1230 (citing RCW 23B.08.300—400). Washington law is clear
6 that directors and officers are not permitted any personal profit or advantage stemming from the
7 exercise of their roles in the corporation. Leppaluoto v. Eggleston, 57 Wn.2d 393, 402 (1960).

8 To that end, Washington law regulates “conflicting interest” transactions, defined as
9 transactions in which

10 ... the director knows at the time of the commitment that the director or a related person
11 is a party to the transaction or has a beneficial financial interest in or so closely linked to
12 the transaction and of such financial significance to the director or a related person that
13 the interest would reasonably be expected to exert an influence on the director’s
14 judgment if the director were called upon to vote on the transaction.

15 RCW 23B.08.700(1). In order to avoid the impropriety of a conflicting interest transaction, a
16 director contemplating such a commitment is required to obtain approval from a majority, but no
17 fewer than two, of the qualified directors of the company who do not have a conflicting interest
18 in the transaction. RCW 23B.08.720.

19 The most problematic aspect of Defendant’s financial dealings as the person with primary
20 fiduciary responsibility for CIC was the payment, over the course of many years, of management
21 fees to the Darshan League. Darshan was created by Robert and owned by him until his death.
22 (CIC Mtn, Ex. A, Defendant Depo at 170:13-19.) According to Defendant, Darshan was paid
23 management fees (totaling millions of dollars) for “helpful management and advice... providing
24 dad’s advice and my advice and helping with, you know, the ongoing discussions of what go
[sic] on in running a company...” (Id. at 154:12-18.) Although Defendant himself received no
salary from Darshan, he did receive approximately \$1 million in loans from Darshan (Id. at

1 171:7-18) which have never been repaid. (Id. at 206:16-18). Upon Robert’s death, Defendant
2 became the owner of Darshan. (Id. at 171:23-24.) At that point, the Court presumes that any
3 payments to Darshan became payments to Defendant.

4 This is a textbook example of a “conflicting interest transaction.” Even before Defendant
5 assumed ownership of Darshan, (1) CIC’s payment of management fees to the company was a
6 direct financial benefit to his father, who unquestionably qualifies as a “related person” under the
7 language of the statute and (2) Defendant was the recipient of approximately \$1 million in
8 (unrepaid) loans from the company. (Id. at 206:16-18.) Once Defendant assumed ownership of
9 Darshan upon his father’s death (2013), the conflict is further compounded – he now owned a
10 company which he was unilaterally deciding would be receiving management fees from another
11 company of which he was an officer and director. In a crowning act of self-dealing, on the day
12 of his removal as General Partner at Argyll he directed the CIC bookkeeper to pay Darshan
13 \$50,000 in “consultancy management fees.” (Id. at 209:24—210:15.)

14 Defendant attempts to deflect this issue with his own variation of the “Dad made me do
15 it” defense. He goes to great lengths to chronicle how Robert retained (seemingly absolute)
16 control over the affairs of Argyll and CIC even after he stepped down as General Partner and
17 appointed Defendant. He describes his father as “strong-willed” and “controlling” and cites the
18 power that Robert retained to remove Defendant as General Partner at any time. His brief even
19 names Robert the “Uber-General Partner” of Argyll. (Def Response, Dkt. No. 108-1 at 4-5.) As
20 personally unfortunate as this all might be, it is useless as a legal defense. Defendant had
21 complete and actual legal responsibility for CIC – the fact that he abdicated that responsibility to
22 his father does not operate to shield him from the operation of the “conflicted interest” statute,
23 from his responsibility as a fiduciary of the company and (ultimately) from liability.

1 In fact, his “defense” that he lived in seemingly daily fear of losing his job acts as further
2 evidence of the conflicted nature of the CIC-Darshan arrangement – because of their fiduciary
3 responsibility to the corporation, “directors and officers cannot directly or indirectly acquire a
4 profit for themselves or *acquire any other personal advantage* in dealings with others on behalf
5 of the corporation.” State ex rel. Hayes Oyster Co. v. Keypoint Oyster Co., 64 Wn.2d 375, 381
6 (1964)(emphasis supplied). Defendant’s constant acquiescing to his father’s wishes/demands in
7 order to retain his position was nothing other than the acquisition of a personal advantage.

8 By statutory operation, all these conflicted interest transactions triggered the requirement
9 that Defendant obtain approval from a majority, but no fewer than two, of the qualified directors
10 of the company who did not have a conflicting interest in the transaction. RCW 23B.08.720. It
11 is wholly undisputed that Defendant did not do this. (CIC Mtn, Ex. A, Def Depo at 113:5-7.)

12 Plaintiff CIC has a litany of other conduct which it alleges constituted breaches of
13 Defendant’s fiduciary duty to the corporation – his failure to obtain approval from the directors
14 for any business decision, his failure to hold a single formal board of directors or shareholders
15 meeting during his tenure, his partnering of CIC with other smaller companies (in some of which
16 he had an interest) for investment applications, his excessive global travel expenses – but they
17 are all subject to either a laches defense (*see infra*) or exculpatory explanations of Defendant
18 which transform them to disputed issues of material fact.

19 In any event, the Court does not find that anything beyond the conflicted interest
20 transactions described above is required to award summary judgment to CIC on their breach of
21 fiduciary duty claim. The facts are undisputed and the law is clear. Defendant’s conduct in this
22 regard violates at least two of the four elements of the statutory duty laid out in RCW
23 23B.08.320: it is intentional misconduct, and it generated benefits to which Defendant was not
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1 | legally entitled at the expense of the corporation. Only one element is required to establish a
 2 | violation. On the undisputed facts before the Court, Plaintiff CIC is entitled to summary
 3 | judgment as a matter of law on its breach of fiduciary duty claim.

4 | **A. Defenses**

5 | Similar to his argument that his behavior did not constitute “willful misconduct,”
 6 | Defendant interposes defenses/explanations of “good faith” to defeat summary judgment against
 7 | CIC, claiming that he believed his actions were in the best interests of the company and that the
 8 | fees which he committed CIC to pay to Darshan inured to the company’s benefit in terms of their
 9 | father’s wisdom, expertise and guidance. (Dkt. No. 108, Def. Response at 17-22.) At the very
 10 | least, he argues, his subjective beliefs and motivations raise disputed issues of material fact
 11 | which are not amenable to resolution by summary judgment. This is not a persuasive argument.

12 | In the first place, Defendant cites no authority that a good faith belief that he was acting
 13 | in the company’s best interests transforms a conflicted interest transaction into a legally-
 14 | sanctioned one or exempts him from the operation of RCW 23B.08.700(1) or RCW 23B.08.720.
 15 | In the second place, RCW 23B.08.320 dictates a finding of breach of fiduciary duty whenever a
 16 | defendant is involved in “[a]ny transaction with benefits to which the director is not entitled.”
 17 | No exception is made for transactions which are allegedly motivated by a good faith belief that
 18 | the actions were somehow legitimate or benign.

19 | Finally, Defendant asserts that the causes of actions of all the Plaintiffs are defeated by
 20 | the equitable doctrine of laches, the elements of which are (1) an unreasonable delay in filing a
 21 | suit (2) by operation of which a defendant is prejudiced. Jarrow Formulas, Inc. v. Nutrition
 22 | Now, Inc., 304 F.3d 829, 835 (9th C. 2002). He points out that, if the statute of limitations on a
 23 | particular cause of action has run, laches is presumed. Id. at 835-36.

1 As Defendant raises this defense in regards to the claims of all Plaintiffs, the Court's
2 analysis will encompass all claims at issue in this consolidated lawsuit. Defendant is correct that
3 alleged misconduct such as the refusal to provide financial information or hold meetings was
4 known to (and complained about by) the siblings for many years. In terms of the first-filed,
5 RRW-Antoinette Walker portion of the suit, this argument is only applicable to Antoinette's
6 personal claims, which have been resolved and are no longer at issue. The declaratory judgment
7 action on behalf of RRW concerns events which occurred in 2014 and there is clearly no issue as
8 to laches regarding the propriety of the removal of Defendant and appointment of RRW as his
9 successor – RRW filed suit within weeks of Defendant's removal.

10 Concerning the CIC fiduciary duty claim, the defense fails. First of all, the statute of
11 limitations for a fiduciary duty breach is three years. (RCW 4.16.080.) CIC filed its complaint
12 in October 2014, so the effective date of any alleged violations runs back to October 2011:
13 within that period of time, Robert was still alive, Darshan was being paid its consultancy fees,
14 and Defendant took over Darshan and began essentially paying himself (including his final act of
15 writing himself a \$50,000 check on his way out the door). There are more than sufficient
16 grounds for a breach of fiduciary duty claim in that time frame, so no presumption of
17 unreasonable delay or prejudice accrues to Defendant.

18 Defendant presents no proof that CIC was aware of the payments to Darshan prior to
19 their October 2014 filing, so he has no evidence to support an "unreasonable delay" argument.
20 His "prejudice" argument is composed of a single fact: Robert is dead. This argument is
21 premised on the assumption his father's testimony (presumably about Robert calling the shots for
22 Argyll and CIC and directing/"forcing" his son to do all the things he is now being sued for)
23 would somehow be exculpatory, but in actuality Robert's testimony is irrelevant to the issues in
24

1 this lawsuit. Nothing Robert could testify to would change the nature of Defendant's duties nor
2 the fact that at the end of the day he was legally responsible for the decisions he made in his
3 capacity of officer and director of CIC. The absence of Robert does not operate to Defendant's
4 legal prejudice here.

5 Finally, as regards Defendant's invocation of the equitable defense of laches, it is
6 hornbook law that one who seeks equity must have clean hands. Cornish College of the Arts v.
7 1000 Virginia Ltd. Partnership, 158 Wn.App. 203, 216 (2010); Precision Instrument Mfg. Co. v.
8 Auto. Maint. Mach. Co., 324 U.S. 806, 814 (1945). Based on the findings that Defendant
9 breached his duty of fiduciary duty, violated Washington limited partnership statutes and
10 engaged in multiple conflicted interest transactions, it almost goes without saying that he does
11 not come before the Court with clean hands.

12 The Court finds, on the undisputed facts presented, that Plaintiff CIC is entitled as a
13 matter of law to a summary judgment finding in its favor on the claim of breach of fiduciary duty
14 by Defendant.

15 ***B. CIC's Motion to Strike***

16 In its reply brief, CIC moves to strike a number of statements which Defendant submitted
17 as evidence on the grounds that they are hearsay or otherwise unsupported by proper foundation.
18 (Dkt. No. 114 at 11-12.) The Court agrees – the statements (contained in the Declarations of
19 Victoria Walker, Stephen Gray, Patricia Greenwade, and Scott McClelland) are all inadmissible
20 hearsay and opinion testimony. The Court grants the motion to strike the statements identified in
21 CIC's reply brief and indicates that none of the statements were considered in arriving at the
22 findings contained herein.
23
24

1 **Conclusion**

2 For the reasons stated above, the Court

3 1. GRANTS summary judgment to Plaintiff RRW on its request for declaratory
4 relief.

5 2. GRANTS summary judgment to Plaintiff RRW and DISMISSES Defendant's
6 counterclaims against it.

7 **3.** GRANTS Plaintiff CIC's motion to strike the hearsay statements submitted by
8 Defendant.

9 **4.** GRANTS summary judgment to Plaintiff CIC on its claim of breach of fiduciary
10 duty.

11 The clerk is ordered to provide copies of this order to all counsel.

12 Dated: October 8, 2015.

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15 Marsha J. Pechman
16 United States District Judge
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